

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 CATHERINE L. WISSENBACK,

12 Plaintiff,

13 v.

14 OREGON JV LLC, a New York limited
15 liability company, et al.,

16 Defendants.
17

No. 2:24-cv-02047-DJC-JDP

ORDER

18 Pending before the Court is Defendant Christopher Peterman's Motion to
19 Dismiss (Mot. Dismiss ("Mot") (ECF No. 5)) Plaintiff Catherine Wissenback's Complaint
20 (Compl. (ECF No. 1)). Defendant is one of several named defendants in Plaintiff's suit.
21 Plaintiff alleges five claims against Defendant Peterman: (1) fraudulent transfer with
22 actual intent to hinder or delay and/or transfer to insider; (2) unjust enrichment; (3)
23 aiding and abetting; (4) civil conspiracy; (5) monetary damages. Defendant Peterman
24 argues that all claims against him should be dismissed because this Court lacks
25 personal jurisdiction over him. For the reasons discussed below the Court GRANTS
26 the Motion to Dismiss Defendant Peterman for lack of personal jurisdiction with leave
27 to amend.

28 ///

I. Background

A. Parties' Backgrounds

There are several named parties in the suit. But for purposes of this Order, the Court will discuss the individuals relevant to the pending Motion.

Plaintiff Catherine Wissenback, a resident of California, is a beneficiary of the Robert D. Kerner and Eva L. Kerner Family Trust ("Kerner Trust") and of the Kerner Family Generations Trust FBO Catherine L. Wissenback ("Catherine FBO Trust"). (Compl. ¶ 1.) Defendant Christopher Peterman¹ is an Oregon-based attorney and Oregon resident. (*Id.* ¶ 11.) Defendant Peterman is alleged to represent Plaintiff's brother-in-law and co-trustee of the Kerner Trust, Joseph Russi. (*Id.* ¶¶ 7, 11, 24.) Joseph Russi is married to Plaintiff's sister, Deborah Russi, who is the trustee of the Catherine FBO Trust, and both are residents of Oregon. (*Id.* ¶ 7.) Joseph and Deborah Russi are accused of squandering Plaintiff's trust fund assets. (See *id.* ¶¶ 27, 28.)

B. Factual Background

Plaintiff's now-deceased parents created the Kerner Trust, originally dated October 10, 1990, and amended and reinstated February 18, 2012, in California. (*Id.* ¶¶ 15, 16.) This Trust was funded with various properties and some financial accounts. (*Id.* ¶ 17.) The properties included: the Kerner Family home in Fair Oaks, California, a Lake Tahoe, California vacation home and land in Clearlake, California. (*Id.*; Mot. at 8.) Under the Kerner Trust, Plaintiff and Deborah Russi were entitled to fifty percent of the final distribution, and each daughter's share would be distributed into a separate irrevocable FBO trust for their respective benefit. (Compl. ¶ 18.) Each FBO Trust was created and funded with fifty percent of two mobile home parks located in Pollack Pines, California and West Sacramento, California. (*Id.* ¶ 19.) Deborah Russi was

¹ The Court notes that the Complaint refers to Defendant Peterman's last name as both Peterman (Compl. ¶ 11,) and Peterson (*id.* ¶ 67,). Should Plaintiff amend her Complaint, the Court recommends ensuring that the names are consistent.

1 named the trustee of Plaintiff's FBO Trust. (*Id.* ¶ 21.) Plaintiff alleges that Deborah
2 Russi never told her that an irrevocable trust was created for her benefit and never
3 provided notice that she was entitled to a yearly accounting. (*Id.* ¶¶ 27, 28.) The
4 Russis are accused of selling off some of the properties funding the trusts, draining the
5 Kerner Family Trust, and funneling the money into their personal trust. (*Id.* ¶¶ 30-37.)
6 The Russis are then accused of taking the assets and relocating to Oregon. (*Id.* ¶ 37.)

7 In July 2019, Plaintiff commenced an arbitration action against the Individual
8 Defendants before the American Arbitration Association (Case No. 01-19-002-1447)
9 following the improper and fraudulent property transfers and sales, and use of the
10 Kerner Trust, by the Russis. (*Id.* ¶ 41.) To delay the Arbitration, Plaintiff states that the
11 Russis filed for bankruptcy (*In re Joseph Francis Russi Jr. and Deborah Elaine Russi*,
12 No. 20-61728-tmr) in the United States Bankruptcy Court, District of Oregon.
13 (*Id.* ¶ 42.) The bankruptcy case was ultimately dismissed, (*id.* ¶ 43,) and a Settlement
14 Agreement was executed in February 2021 requiring that the Russis transfer Plaintiff
15 certain funds owed to her (*id.* ¶ 44). The Arbitration then resumed and resulted in a
16 favorable decision for Plaintiff. (*Id.* ¶ 48.) However, the Russis had allegedly been
17 transferring the real property assets away from their custody from the time of the
18 bankruptcy proceedings, to make it difficult for Plaintiff to recover. (*Id.* ¶ 45.) The
19 properties that the Russis are accused of transferring appear to all have been located
20 in Oregon but are alleged to have been purchased with the funds stolen from the
21 Kerner Family Trust. (*Id.* ¶ 45.)

22 Plaintiff claims "on information and belief" that Defendant Peterman was
23 involved in, and knew, or should have known, that these fraudulent transfers were
24 occurring. (*Id.* ¶ 50.) Plaintiff also states that Defendant Peterman knew, or should
25 have known, of the bankruptcy proceeding and the terms of the bankruptcy
26 Settlement Agreement, and instead aided and abetted the fraudulent transfer of
27 properties. (*Id.*) Lastly, Defendant Peterman is accused of knowing that the Plaintiff was
28 "bringing various legal actions" against the Russis in both California and Oregon. (*Id.*)

Plaintiff now brings the following causes of action against Defendant Peterman: (1) fraudulent transfer with actual intent to hinder or delay and/or transfer to insider; (2) unjust enrichment; (3) aiding and abetting; and (4) civil conspiracy; and (5) monetary damages. (See *generally* Compl.) Defendant Peterman argues that all claims against him should be dismissed because this Court lacks personal jurisdiction over him. (See *generally* Mot.) Plaintiff opposes this Motion. (Opp'n. (ECF No. 11)).²

II. Legal Standard

Pursuant to Federal Rule of Civil Procedure 12(b)(2), a party may assert a lack of personal jurisdiction as a defense, and request dismissal of the suit. Fed. R. Civ. P. 12(b)(2). The plaintiff bears the burden of proving that the court's exercise of jurisdiction is proper. See *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (citation omitted). Absent an evidentiary hearing, the plaintiff need only make "a prima facie showing of jurisdiction to avoid the defendant's motion to dismiss." *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). "The court may consider evidence presented in affidavits to assist in its determination and may order discovery on the jurisdictional issues." *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001), *abrogated on other grounds by Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014) (citation omitted). The plaintiff may not rest solely on the "bare allegations of its complaint" but "uncontroverted allegations in the complaint must be taken as true." *Schwarzenegger*, 374 F.3d at 800 (citations omitted). Furthermore, any "conflicts between the facts contained in the parties' affidavits must be resolved in [plaintiff's] favor for purposes of deciding whether a prima facie case for personal jurisdiction exists." *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996) (citations omitted).

////

² Defendant requests judicial notice of two documents: two complaints filed by Plaintiff in the Oregon Circuit Court for the County of Douglas, and requests that the fact of their filing be judicially noticed. (ECF No. 8.) The Court need not consider the documents contained in the request for judicial notice, and therefore the request is DENIED.

III. Discussion

A. California's Long-Arm Statute Applies

Unless a federal statute authorizes personal jurisdiction, the district court applies the law of the forum state. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citations omitted). California's long arm statute grants the exercise of personal jurisdiction to the extent allowed by the U.S. Constitution. Cal. Civ. Proc. Code § 410.10. Here, there is no relevant statute governing the issue of personal jurisdiction. Thus, this Court need only determine whether its exercise of personal jurisdiction over any defendant would offend constitutional due process requirements. See *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1110 (9th Cir. 2002).

Due process requires that a defendant "have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quotation marks omitted). Rather than use "mechanical" tests to determine personal jurisdiction, *id.* at 319, courts should consider the "quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure," *id.* Under these standards, the Court now analyzes whether personal jurisdiction exists over Defendant Peterman.

B. The Court Lacks Personal Jurisdiction Over Defendant Peterman

Courts may have general or specific jurisdiction over an entity depending on the nature and extent of the entity's contact with the forum state. As an initial matter, neither party contends that general jurisdiction exists over Defendant Peterman. (See Opp'n at 1; Reply (ECF No. 12) at 4.) Thus, the Court's inquiry centers on the existence of specific jurisdiction. As a general rule, each defendant's contacts with the forum state must be assessed individually. *Calder v. Jones*, 465 U.S. 783, 790 (1984).

Specific jurisdiction requires a "strong relationship among the defendant, the forum, and the litigation." *Ford Motor Co. v. Montana Eighth Jud. Dist.*, 592 U.S. 351, 353 (2021) (citation and quotation marks omitted). The Ninth Circuit applies a three-

part “minimum contacts” test to determine whether exercising specific personal jurisdiction over a nonresident defendant is proper: “(1) the defendant must either ‘purposefully direct his activities’ toward the forum or ‘purposefully avail[] himself of the privileges of conducting activities in the forum’; (2) ‘the claim must be one which arises out of or relates to the defendant’s forum-related activities’; and (3) ‘the exercise of jurisdiction must comport with fair play and substantial justice; i.e, it must be reasonable.’” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (citation omitted). “The plaintiff bears the burden of satisfying the first two prongs of the test” while the burden of the third prong rests on the defendant. *Schwarzenegger*, 374 F.3d at 802. The Court will take each prong in turn.

1. Purposeful Availment and Direction

Purposeful availment and purposeful direction are distinct concepts. *Id.* That said, there is no “rigid dividing line between these two types of claims.” *Davis v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th 1154, 1162 (9th Cir. 2023) (citation omitted). Instead, “courts should comprehensively evaluate the extent of the defendant’s contacts with the forum state and those contacts’ relationship to the plaintiff’s claims – which may mean looking at both purposeful availment and purposeful direction.” *Id.*

“To have purposefully availed itself of the privilege of doing business in the forum, a defendant must have performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state.” *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (citation and quotation marks omitted). Similarly, purposeful direction involves intentional contact with the state. It is “the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there” which are relevant to the inquiry. *Walden v. Fiore*, 571 U.S. 277, 285 (2014). The defendant’s mere knowledge that the plaintiff resides in the forum state “will not, on its own, support the exercise of specific jurisdiction. . . .” *Axiom*, 874 F.3d at 1070. However, “individualized targeting may remain relevant to the minimum contacts inquiry,” *id.*, as “a defendant’s contacts with the forum State

1 may be intertwined with his transactions or interactions with the plaintiff. . . .” *Walden*,
 2 571 U.S. at 286. Only purposeful contacts, and not “random, fortuitous, or attenuated
 3 contacts” will give rise to personal jurisdiction. *Id.* (citation omitted).

4 Both Parties agree that the purposeful direction analysis is appropriate here as
 5 the causes of action rest in tort (see Opp’n. at 4; Mot. at 16). See *Glob. Commodities*
 6 *Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir.
 7 2020) (“Purposeful avilment generally provides a more useful frame of analysis for
 8 claims sounding in contract, while purposeful direction is often the better approach
 9 for analyzing claims in tort.”). To assess whether purposeful direction exists, courts
 10 apply the “effects” test. See *Calder*, 465 U.S. at 787. Under this test, “the defendant
 11 allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum
 12 state, (3) causing harm that the defendant knows is likely to be suffered in the forum
 13 state.” *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199,
 14 1206 (9th Cir. 2006) (en banc) (cleaned up). Defendant concedes that “any legal
 15 services provided by Peterman to Joseph or Deborah Russi in connection with
 16 pending litigation or the preparation of contracts or deeds would have been
 17 intentional.” (Mot. at 17.) Accordingly, the Court will examine the second and third
 18 prongs of the effects test.

19 **i. Express Aiming**

20 Plaintiff claims that Defendant Peterman engaged in conduct sufficient to show
 21 that he committed an intentional act expressly aimed at the forum state of California.
 22 The conduct included representation of the Russis, the fact that Defendant Peterman
 23 facilitated conversations with Plaintiff to address the Russis’ alleged tortious behavior
 24 as part of his representation, and that Defendant Peterman failed to uphold the
 25 Settlement Agreement.³ To satisfy the express aiming prong, the Supreme Court has

27 ³ In the Opposition, Plaintiff alleges that Defendant Peterman began representing the Russis “before
 28 they even left California.” (See Opp’n at 13.) Because this allegation is not included in the operative
 Complaint, the Court does not consider it. Moreover, Plaintiff’s sole, general allegation in the

1 made clear that courts “must look to the defendant’s ‘own contacts’ with the forum,
2 not to the defendant’s knowledge of a plaintiff’s connections to a forum.” See *Axiom*,
3 874 F.3d at 1070 (citing *Walden*, 571 U.S. at 289). The defendant’s conduct must form
4 the necessary connection with the forum state as the plaintiff cannot be the only link
5 between the defendant and the forum. See *Bristol-Myers Squibb Co. v. Superior*
6 *Court*, 582 U.S. 255, 265 (2017).

7 Taking the facts in the light most favorable to Plaintiff, it does not appear that
8 Defendant’s *own contacts* are “expressly aimed” at the forum state. The Complaint
9 alleges that Defendant Peterman is an Oregon-based attorney, who represented
10 Oregon residents in matters in Oregon. (Compl. ¶¶ 6-7, 11, 42.) Moreover, the
11 properties that Defendant Peterman is accused aiding and abetting the transfer of
12 appear to also be located in Oregon (See *id.* ¶¶ 50, 54). Compare *Wilson v. The*
13 *Wealth Conservancy, Inc.*, No. 4:07-cv-01076 CW, 2007 WL 1288345, at *4 (N.D. Cal.
14 Apr. 30, 2007) (finding that defendant expressly aimed conduct at the forum state,
15 California, where a contract was drafted governing plaintiff’s landlord relationship with
16 a tenant living in her real property in California).

17 Next, the Court turns to Defendant Peterman’s involvement with the Settlement
18 Agreement. First, it does not appear that Defendant Peterman was a party to the
19 agreement such that he would be bound by its terms. Rather, he represented the
20 Russis in the bankruptcy proceedings where the agreement was signed. In the
21 Complaint, Plaintiff appears to allege that Defendant Peterman was involved in and
22 knew or should have known about the improper transfers of properties held in
23 Defendant Russi’s name to Defendant Oregon JV LLC while the bankruptcy
24 proceedings were ongoing. Plaintiff also alleges that Defendant Peterman should
25 have known about the terms of the Settlement Agreement yet violated the terms by
26 aiding and abetting the transfer of properties. However, Plaintiff fails to clearly explain

27 Complaint that Defendant Peterman represented Joseph Russi “throughout this time period” does not
28 show that Defendant Peterman directed his behavior to California. (See Compl. ¶ 11.)

1 what actions Defendant Peterman, himself, took to aid and abet the transfer of such
 2 properties, why his actions violated the Settlement Agreement, and how such actions
 3 were expressly aimed at California.⁴ While Plaintiff seems to claim that Defendant
 4 Peterman knew Plaintiff would suffer harm in California, that argument cannot alone
 5 support a finding of express aiming. *See AMA Multimedia, LLC v. Wanat*, 970 F.3d
 6 1201, 1209 n.5 (9th Cir. 2020) (explaining that a “defendant’s knowledge that harm
 7 may be inflicted on a plaintiff in a particular forum” cannot alone show express aim).
 8 Without more, the Court cannot find that express aiming by Defendant Peterman
 9 exists.

10 **ii. Causing Harm that the Defendant Knows is Likely to be**
 11 **Suffered in the Forum State**

12 Lastly, the plaintiff must show that the defendant’s “conduct caus[ed] harm that
 13 it knew was likely to be suffered in the forum.” *See Yahoo!*, 433 F.3d at 1206. “This
 14 element is satisfied when [the] defendant’s intentional act has foreseeable effects in
 15 the forum.” *Fatnani v. JPMorgan Chase Bank*, 743 F. Supp. 3d 1253, 1269 (D. Or.
 16 2024) (citing *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1131 (9th
 17 Cir. 2010), *abrogated on other ground as recognized in Axiom*, 874 F.3d at 1069-70).
 18 Thus, the question is whether it is foreseeable that Defendant Peterman’s legal
 19 services provided to the Russis, and the preparation and drafting of any contracts or
 20 deeds pertaining to this litigation, have foreseeable effects in California. On the one
 21 hand, the Complaint alleges that the Plaintiff and the Russis had been involved in
 22 multiple disputes about the California trust fund assets. Yet it is unclear from the
 23 present allegations that Defendant Peterman knew that harm would occur in
 24 California by representing the Russis in their Oregon-based disputes. Thus, the Court
 25 finds that this requirement has not been satisfied.

26 ⁴ To the extent the Plaintiff rests on “Plaintiff’s Response to Defendants’ Motion for Summary Judgment”
 27 (ECF No. 1, Ex. 17,) to “explain to the Court how all of the parties. . .were working together to transfer
 28 the properties. . .” (Compl. ¶ 67,) the Court finds there is little to no discussion of Defendant Peterman’s
 connection to the alleged scheme, nor does Plaintiff outline his connection in the Complaint.

1 **2. Remaining Prongs**

2 Because the Court finds that Plaintiff has not met its burden to demonstrate that
3 Defendant Peterman purposefully directed his actions toward the forum state, Plaintiff
4 has failed to show that this Court can exercise specific personal jurisdiction over him.
5 Thus, the Court need not analyze the remaining prongs. *See Fatnani*, 743 F. Supp. 3d
6 at 1271-72 (dismissing defendant for failure to satisfy the first prong of the minimum
7 contacts test without analyzing the remaining prongs).

8 **IV. Conclusion**

9 For the reasons about the Court GRANTS the Defendant's Motion to Dismiss for
10 lack of Personal Matter Jurisdiction (ECF No. 5) with leave to amend. Plaintiff shall file
11 a second amended complaint within twenty-one days of this order.

12
13 Dated: March 13, 2025

14 
15 _____
16 THE HONORABLE DANIEL J. CALABRETTA
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28